



EMPLOYMENT TRIBUNALS

Claimant

Mr C Reast

v

Respondent

Ecotrans UK Recycling Ltd

Heard at: Sheffield (by video link)

On: Thursday 7 March 2024

Before: Employment Judge James

Representation

For the Claimant: Ms T Hanley, lay representative

For the Respondent: Miss V Hall, lay representative

JUDGMENT

(1) The claim for unauthorised deduction of wages (s.23 Employment Rights Act 1996) succeeds. The respondent is ordered to pay to the claimant the sum of £275.08.

WRITTEN REASONS

1. On the termination of the claimant's employment, the respondent deducted the sum of £275.08 from his final wage, because the respondent alleged that the claimant had taken more holidays than he had accrued by the date his employment ended (following his resignation). The respondent said that the claimant had taken 16 days, when only 12.7 days had accrued. It rounded the balance down to three days, and three days pay was then deducted.
2. Information provided to the tribunal by the claimant in preparation for this hearing, suggested that in fact, the claimant had only taken 11 days holiday by the time his employment ended. His wage slips showed five days 'holiday pay' in April and May 2023, which were in fact referable to days he had worked on the five bank holidays in April and May 2023. He had been told by the respondent employer that he needed to work those days but that he would receive an extra days 'holiday pay' for each bank holiday worked, in addition to his usual wage. The pay slips reflect that.

3. At the outset of the hearing I asked Miss Hall if it was accepted that the above facts were correct. Miss Hall spoke to Ms Shaw and subsequently confirmed that the claimant had in fact only taken 11 days holiday. On that basis, it was clear that there had been an unauthorised deduction of wages, because the state of affairs that had been alleged by the respondent, and which the respondent had relied on when deducting three days pay, was not in fact correct. On that basis, judgment has been given for the claimant as set out above.
4. I pointed out that rather than the claimant owing the respondent money, the claimant was due 1.7 days pay from the respondent. I asked Ms Hanley, on the claimant's behalf, whether she wished to make an application to amend the claim to include a claim for 1.7 days accrued but unpaid holiday. She confirmed she did so. However, Ms Hanley also said that the information which had been provided to the tribunal, which is referred to above, suggesting that the claimant had only in fact taken 11 days holiday whilst he worked for the respondent, was known to the claimant at the time he submitted the claim. That factual information is not asserted in the claim form however.
5. Ms Hall opposed the application to amend. Bearing in mind the usual factors to be taken into account when considering whether amendments should be allowed, which includes time limits, I concluded that the application to amend should be refused, because it was highly likely that I would find that it was reasonably practicable to have submitted the claim for accrued but unpaid holidays, at the time that the original claim form was submitted.

Employment Judge James
North East Region

Dated 7 March 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>